

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RUBEN TORRES, *et al.*,  
Plaintiffs,  
v.  
FORD MOTOR COMPANY, *et al.*,  
Defendants.

Case No. 5:24-cv-02016-FLA (SHKx)

**ORDER REMANDING ACTION FOR  
LACK OF SUBJECT MATTER  
JURISDICTION [DKT. 12]**

**RULING**

On August 5, 2024, Plaintiffs Ruben Torres and Arielle Halliburton (together, “Plaintiffs”) filed the Complaint in the San Bernardino County Superior Court, asserting against Defendant Ford Motor Company (“Defendant” or “FMC”) three causes of action for violations of the California Song-Beverly Consumer Warranty Act (the “Song-Beverly Act”), Cal. Civ. Code § 1790, *et seq.* Dkt. 1-2 (“Compl.”) ¶¶ 20–61. As relevant here, Plaintiffs seek actual damages, civil penalties, and attorney’s fees. *Id.* at 11.<sup>1</sup>

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<sup>1</sup> The court cites documents by the page numbers added by the court’s CM/ECF System rather than any page numbers included natively.

1 On September 19, 2024, Defendant removed the action to this court, alleging  
2 the existence of diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Dkt. 1 (“NOR”)  
3 at 3–5. On October 29, 2024, the court ordered the parties to show cause (“OSC”)  
4 why the action should not be remanded for lack of subject matter jurisdiction due to  
5 an insufficient amount in controversy. Dkt. 12. Defendant filed a response on  
6 November 12, 2024. Dkt. 16 (“Def. Resp.”). Plaintiffs did not file a response.

7 Having reviewed the Notice of Removal and Defendant’s response to the OSC,  
8 the court finds Defendant fails to establish subject matter jurisdiction by a  
9 preponderance of the evidence and REMANDS this action to the San Bernardino  
10 County Superior Court.

### 11 DISCUSSION

12 Federal courts are courts of “limited jurisdiction,” possessing “only that power  
13 authorized by [the] Constitution and statute, which is not to be expanded by judicial  
14 decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)  
15 (citations omitted); U.S. Const. art. III, § 2, cl. 1. District courts are presumed to lack  
16 jurisdiction unless the contrary appears affirmatively from the record.

17 *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n. 3 (2006). Additionally, federal  
18 courts have an obligation to examine jurisdiction *sua sponte* before proceeding to the  
19 merits of a case. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

20 Federal courts have jurisdiction where an action arises under federal law or  
21 where each plaintiff’s citizenship is diverse from each defendant’s citizenship and the  
22 amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C.  
23 §§ 1331, 1332(a). Thus, a notice removing an action from state court to federal court  
24 must include “a plausible allegation that the amount in controversy exceeds the  
25 jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81,  
26 89 (2014). Where “the plaintiff contests, or the court questions, the defendant’s  
27 allegation” concerning the amount in controversy, “both sides [shall] submit proof,”  
28 and the court may then decide whether the defendant has proven the amount in

1 controversy “by a preponderance of the evidence.” *Id.* at 88–89. As the removing  
2 party, Defendant bears the burden to justify this court’s exercise of jurisdiction. *Gaus*  
3 *v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992). “Federal jurisdiction must be  
4 rejected if there is any doubt as to the right of removal in the first instance.” *Id.* at  
5 566.

#### 6 **A. Actual Damages**

7 At issue here is whether the amount in controversy exceeds the \$75,000  
8 jurisdictional minimum for diversity jurisdiction. Under the Song-Beverly Act, a  
9 plaintiff may recover “in an amount equal to the actual price paid or payable by the  
10 buyer,” reduced by “that amount directly attributable to use by the buyer prior to the  
11 time the buyer first delivered the vehicle to the manufacturer or distributor, or its  
12 authorized service and repair facility for correction of the problem that gave rise to the  
13 nonconformity.” Cal. Civ. Code § 1793.2(d)(2)(B)–(C). This includes a mileage  
14 offset, which is calculated by reducing the purchase price by an amount directly  
15 proportional to the number of miles driven. *Id.* § 1793.2(d)(2)(C).

16 Plaintiffs allege the total approximate value of the vehicle is \$48,525.84.  
17 Compl. ¶ 8. Defendant does not rebut the value of actual damages. *See generally*  
18 Def. Resp. Thus, for purposes of this Order, the court assumes, without making any  
19 related legal or factual determinations, that the actual damages Plaintiffs might  
20 recover in this action are \$48,525.84.

#### 21 **B. Civil Penalties**

22 Defendant next argues Plaintiffs’ request for civil penalties of twice the base  
23 amount of damages must be included in the amount in controversy calculation. Def.  
24 Resp. at 4. “A plaintiff who establishes that a violation of the Song-Beverly Act was  
25 willful may recover a civil penalty of up to two times the amount of actual damages.”  
26 *Estrada v. FCA US LLC*, Case No. 2:20-cv-10453-PA (JPRx), 2021 WL 223249,  
27 at \*3 (C.D. Cal. Jan. 21, 2021) (citing Cal. Civ. Code § 1794(c)) (brackets omitted).  
28 However, “[t]he civil penalty under California Civil Code § 1794(c) cannot simply be

1 assumed.” *Pennon v. Subaru of Am., Inc.*, Case No. 2:22-cv-03015-SB (RAOx), 2022  
2 WL 2208578, at \*2 (C.D. Cal. June 17, 2022) (remanding action where defendant  
3 provided no specific argument or evidence for including a civil penalty in the amount  
4 in controversy) (quotation marks omitted).

5 District courts regularly find Song-Beverly Act plaintiffs’ conclusory  
6 allegations regarding willfulness are insufficient to place civil penalties in controversy  
7 absent specific facts pleaded. *See Estrada*, 2021 WL 223249, at \*3 (collecting cases  
8 “remanding where civil penalties were too speculative for inclusion in the amount-in-  
9 controversy”) (quotation marks omitted). This is because “[s]imply assuming a civil  
10 penalty award is inconsistent with the principle that the defendant must provide  
11 evidence that it is more likely than not that the amount in controversy requirement is  
12 satisfied.” *Makol v. Jaguar Land Rover N. Am., LLC*, Case No. 5:18-cv-03414-NC,  
13 2018 WL 3194424, at \*3 (N.D. Cal. June 28, 2018) (internal quotation marks  
14 removed); *see also Khachatryan v. BMW of N. Am., LLC*, Case No. 2:21-cv-01290-  
15 PA (PDx), 2021 WL 927266, at \*2 (C.D. Cal. Mar. 10, 2021).

16 Defendant does not identify any specific facts or evidence to establish why  
17 Plaintiffs are reasonably likely to recover civil penalties under the Song-Beverly Act.  
18 *See* Def. Resp. at 4–5. Defendant also fails to prove it is reasonable to double the  
19 amount of actual damages in arriving at the size of a likely award. *See Pennon*, 2021  
20 WL 2208578, at \*2. The court, therefore, finds Defendant’s inclusion of civil  
21 penalties to establish the amount in controversy is too speculative for inclusion in the  
22 court’s amount in controversy calculation.

### 23 **C. Attorney’s Fees**

24 Finally, Defendant contends Plaintiffs’ demand for attorney’s fees provides an  
25 additional reason for the court to determine the amount in controversy satisfies the  
26 jurisdictional minimum. Def. Resp. at 5–6. In the Ninth Circuit, attorney’s fees  
27 awarded under fee-shifting statutes may be considered in assessing the jurisdictional  
28 threshold. *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648–49

1 (9th Cir. 2016). A removing defendant, however, must “prove that the amount in  
2 controversy (including attorneys’ fees) exceeds the jurisdictional threshold by a  
3 preponderance of the evidence ... with summary-judgment-type evidence.” *Fritsch v.*  
4 *Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir. 2018). “A district court  
5 may reject the defendant’s attempts to include future attorneys’ fees in the amount in  
6 controversy if the defendant fails to satisfy this burden of proof.” *Id.*

7 “While a defendant may meet its burden to establish a reasonable estimate of  
8 attorneys’ fees by identifying awards in other cases, those cases must be similar  
9 enough to the case at hand that the court can conclude that it is more likely than not  
10 that the plaintiff may incur a similar fee award.” *Kaplan v. BMW of N. Am., LLC*,  
11 Case No. 3:21-cv-00857-TWR (AGS), 2021 WL 4352340, at \*6 (S.D. Cal. Sept. 24,  
12 2021); *see also D’Amico v. Ford Motor Co.*, Case No. 2:20-cv-02985-CJC (JCx),  
13 2020 WL 2614610, at \*4 (C.D. Cal. May 21, 2020) (recognizing “many cases alleging  
14 violations of the [Song-Beverly] Act settle early”). Moreover, a defendant fails to  
15 show attorney’s fees are part of the amount in controversy where it “makes no effort  
16 to explain what amount of attorney fees might be sought or awarded in this case,  
17 neglecting to include so much as an estimate of the hours or billing rates that might  
18 apply.” *Vega v. FCA US, LLC*, Case No. 2:21-cv-05128-VAP (MRWx), 2021 WL  
19 3771795, at \*4 (C.D. Cal. Aug. 25, 2021).

20 As stated, the court finds Defendant has only established by a preponderance of  
21 the evidence that \$48,525.84 in actual damages are at issue. Defendant does not  
22 provide or substantiate a reasonable lodestar estimate for a potential attorney’s fee  
23 award in this action. Instead, Defendant argues the amount of attorney’s fees at issue,  
24 here, exceeds the amount (\$26,474.16) necessary to meet the jurisdictional minimum.  
25 *See* Def. Resp. at 6.

26 Defendant cites cases to argue that recent decisions demonstrate counsel  
27 regularly seek attorney’s fees in excess of \$40,000 in Song-Beverly Act cases. NOR  
28 at 5–6 (citing *Pappas v. Ford Motor Co.*, Case No. 3:21-cv-00584-BEN (KSCx), 2021

1 WL 5810661 (S.D. Cal. Dec. 7, 2021) and *Tapia v. Ford Motor Co.*, Case No. 3:20-  
2 cv-01510-W (MSBx), 2021 WL 5863597 (S.D. Cal. Oct. 19, 2021)). Neither case  
3 supports Defendant's assertion that over \$40,000 in attorney's fees is reasonably at  
4 issue here. In *Pappas*, 2021 WL 5810661, at \*6, the court awarded plaintiff only  
5 \$21,660 in attorney's fees and costs. Similarly, in *Tapia*, 2021 WL 5863597, at \*3,  
6 the court awarded only \$22,828.00 in attorney's fees and \$636.17 in expenses and  
7 costs.


8 It is Defendant's burden to show, by a preponderance of the evidence, that at  
9 least \$26,474.16 in attorney's fees are in controversy. Given that the removal statute  
10 is construed strictly and all doubts are resolved in favor of remand, the court finds  
11 Defendant has failed to demonstrate the amount in controversy exceeds the  
12 jurisdictional minimum based on attorney's fees.

13 **CONCLUSION**

14 For the aforementioned reasons, the court finds Defendant has failed to  
15 demonstrate the amount in controversy exceeds \$75,000, as required to establish  
16 diversity jurisdiction. The court, therefore, REMANDS the action to the San  
17 Bernardino County Superior Court, Case No. CIVSB2424748. All dates and  
18 deadlines in this court are VACATED. The clerk of the court shall close the action  
19 administratively.

20  
21 IT IS SO ORDERED.

22  
23 Dated: December 13, 2024

24  
25   
26 FERNANDO L. AENLLE-ROCHA  
27 United States District Judge  
28